



COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

5 CFR Part 9801

RIN 3219-AA03

Privacy Act Regulations

AGENCY: Council of the Inspectors General on Integrity and Efficiency (CIGIE).

ACTION: Interim final rule; request for comments.

SUMMARY: CIGIE is updating its regulations relating to access, maintenance, disclosure, and amendment of records that are in a CIGIE system of records under the Privacy Act of 1974 (Privacy Act). The purpose of the update is to implement statutory changes in accordance with the provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act that established the Pandemic Response Accountability Committee (PRAC) within CIGIE. CIGIE is giving concurrent notice of a newly established system of records pursuant to the Privacy Act for the PRAC Accountability Data System (PADS)- CIGIE-6 and this interim final rule. In this interim final rule, CIGIE exempts portions of the new system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative oversight requirements.

DATES: This interim final rule is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Written comments may be submitted by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by "Interim Final Rule / CIGIE-6" by any of the following methods:

1. Email: comments@cigie.gov.
2. Mail: Council of the Inspectors General on Integrity and Efficiency, 1717 H Street, NW, Suite 825, Washington, D.C., 20006. ATTN: Virginia Grebasch, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street, NW, Suite 825, Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Virginia Grebasch, Senior Counsel, Pandemic Response Accountability Committee, Council of the Inspectors General on Integrity and Efficiency, (202) 292-2600 or comments@cigie.gov.

SUPPLEMENTARY INFORMATION:

Background Information

In accordance with the Privacy Act, CIGIE is proposing in a concurrently published notice a newly established system of records pursuant to the Privacy Act for the PRAC Accountability Data System (PADS)- CIGIE-6. CIGIE proposes this system of records in furtherance of the PRAC's statutory mandate to conduct oversight of funds disseminated per the CARES Act; the Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020; the Families First Coronavirus Response Act; divisions M and N of the Consolidated Appropriations Act of 2021; and any other act primarily making appropriations for Coronavirus response and related activities. CIGIE is issuing this Notice of Interim Final Rulemaking to

exempt this new system of records from certain provisions of the Privacy Act.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(d)(3), CIGIE has determined that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these amendments and for issuing this interim final rule without a delayed effective date. The notice and comment procedures are being waived because these amendments are being made to fulfill the requirements of the CARES Act, which took effect without delay on March 27, 2020. Additionally, these amendments specify exemptions regarding the public's access to information about themselves maintained by CIGIE. The absence of well-defined exemptions to the Privacy Act regulations could impair confidentiality and privacy rights of those who submit sensitive information to CIGIE through the PRAC and the ability of the PRAC to use that information to carry out its statutory mission.

Executive Orders 12866 and 13563

In promulgating this amended rule, CIGIE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this rule is not "significant" under Executive Order 12866.

Regulatory Flexibility Act

These amended regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These amended regulations impose no additional reporting and recordkeeping requirements. Therefore, clearance by OMB is not required.

Federalism (Executive Order 13132)

This amended rule does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 5 CFR Part 9801

Information, Privacy, Privacy Act, Records.

For the reasons set forth in the preamble, CIGIE amends 5 CFR, part 9801, as follows:

PART 9801--PRIVACY ACT REGULATIONS

1. The authority citation for part 9801 is revised to read as follows:

Authority: Section 11 of the Inspector General Act of 1978, as amended, 5 U.S.C. app.; 5 U.S.C. 301, 552a; 31 U.S.C. 9701; Sec. 15010, Pub. L. No. 116-136, 134 Stat. 281.

2. Amend § 9801.103 by adding paragraph (i) to read as follows:

§ 9801.103 Definitions.

* * * * *

(i) *PRAC* means the Pandemic Response Accountability Committee established under Section 15010 of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281.

3. Amend § 9801.401 by adding paragraph (c) to read as follows:

§ 9801.401 Exemptions.

* * * * *

(c) *Specific system of records exempted under (j) (2), (k) (1), and (k) (2).* The system of records maintained in connection with PRAC Accountability Data System (CIGIE-6), is subject to general exemption under 5 U.S.C. 552a(j) (2) and the

specific exemptions under 5 U.S.C. 552a(k)(1) and (2). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1) and (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, e.g., public source materials, the applicable exemption may be waived, either partially or totally, by CIGIE, at the sole discretion of CIGIE, as appropriate.

(1) Pursuant to the provisions of 5 U.S.C. 552a(j)(2), CIGIE-6 is exempt from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G)-(H), (e)(5), and (e)(8); (f); and (g).

(2) Pursuant to the provisions of 5 U.S.C. 552a(k)(1) and (2), CIGIE-6 is exempt from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1) and (e)(4)(G)-(H); and (f).

(3) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because release of disclosure accounting could alert the subjects of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and the fact that they are subjects of the investigation, and reveal investigative interest by not only CIGIE, through the PRAC, but also by external

agencies such as Federal Offices of Inspector General. Because release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, release could result in the destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation. In addition, accounting for each disclosure could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(ii) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(iii) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subjects of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation and of the nature and scope of the information and evidence obtained as to their activities. Such awareness by the subjects could prevent the successful completion of an investigation and/or lead to the improper influencing of witnesses, the destruction of evidence, or fabricated testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties.

Finally, access to the records could result in the release of classified information which would compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(iv) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of CIGIE through the PRAC for the following reasons:

(A) It is not possible to detect relevance or necessity of specific information in the early stages of a civil, criminal, or other law enforcement investigation, case, or matter, including investigations in which use is made of classified information. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(B) During the course of any investigation, CIGIE, through the PRAC may obtain information concerning actual or potential violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the PRAC should retain this information, as it may aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

(C) In interviewing individuals or obtaining other forms of evidence during an investigation, information may be supplied to an investigator that relates to matters incidental to the primary purpose of the investigation but which may relate also to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(v) From subsection (e)(2) because, in some instances, the application of this provision would present a serious impediment to law enforcement for the following reasons:

(A) The subjects of an investigation would be placed on notice as to the existence of an investigation and would therefore be able to avoid detection or apprehension, to improperly influence witnesses, to destroy evidence, or to fabricate testimony.

(B) In certain circumstances the subjects of an investigation cannot be required to provide information to investigators, and information relating to their illegal acts, violations of rules of conduct, or any other misconduct must be obtained from other sources.

(C) In any investigation it is necessary to obtain evidence from a variety of sources other than the subjects of the investigation.

(vi) From subsection (e)(3) because the application of this provision would provide the subjects of an investigation with substantial information which could impede or compromise the investigation.

(vii) From subsection (e) (4) (G)-(I) because this system of records is exempt from the access provisions of subsection (d).

(viii) From subsection (e) (5) because the application of this provision may prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Material which may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as an investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigative report, and thereby impede effective law enforcement.

(ix) From subsection (e) (8) because the application of this provision could prematurely reveal an ongoing criminal investigation to the subjects of an investigation and could reveal investigative techniques, procedures, or evidence.

(x) From subsection (f) because CIGIE's rules are inapplicable to those portions of the system that are exempt and would place the burden on CIGIE of either confirming or denying the existence of a record pertaining to a requesting individual, which might in itself provide an answer to that individual relating to an ongoing investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to

that individual, and record amendment procedures for this record system.

(xi) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j) (2), (k) (1), and (k) (2) of the Privacy Act.

Dated: May 12, 2021.

Allison C. Lerner,

*Chairperson of the Council of the Inspectors General on
Integrity and Efficiency.*

[FR Doc. 2021-10375 Filed: 5/13/2021 4:15 pm; Publication Date: 5/17/2021]